C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

LA.App..No. 228 of 2004()

LAR.86/2002 of PRINCIPAL SUB COURT,ALAPPUZHA
.....

APPELLANT: CLAIMANTS
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1. SIMON, PARATHARA VEEDU, CHEPPADU.

2. MARIYAMMA, PARATHARA VEEDU, CHEPPADU.

3. K.VARGHESE, PARATHARA VEEDU,
KIZHAKUM MURI, CHEPPADU.

4. MARY VARGHESE, PARATHARA VEEDU,
KIZHAKAM MURI, CHEPPADU.

BY ADV. SRI.PHILIP M.VARGHESE

RESPONDENTS: RESPONDENTS
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1. KERALA STATE- REPRESENTED BY
DISTRICT COLLECTOR, ALAPPUZHA (THE SPECIAL
TAHSILDAR L.A. NO.III), S.T.P.S., HARIPAD.

2. N.T.P.C. LTD., REPRESENTED BY THE
POWER OF ATTORNEY HOLDER SRI.ARUN LODGE,
S/O. C.R.LODGE, DEPUTY GENERAL MANAGER (I/C)
STPP, KAYAMKULAM.

BY ADV. SRI.V.J.JOSEPH
SMT.M.V.LIGI
GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.228 of 2004

Dated 20th November, 2007..

J U D G M E N T

Kurian Joseph, J.

Section 18 and Section 28A of the Land Acquisition Act provide for reference to the court, in case the claimant is not satisfied with the award. A time schedule also is fixed for making an application for reference. Once such an application is duly filed, the Collector is bound to refer the same to the court. But is it within the jurisdiction of the court to examine the question whether there is a valid reference made within the prescribed time?

2. Section 18 of the Land Acquisition Act provides for reference to court, in case a claimant is aggrieved by, and has not accepted the fixation of land value by the Collector. The provision reads as follows :-

> "18. Reference to court
>
> (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.
>
> (2) The application shall state the grounds on which objection to the award is taken:

> PROVIDED that every such application shall be made,--
>
> (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire".

Section 28A of the Act provides for redetermination of the amount of compensation, on the basis of subsequent awards passed by the reference courts in respect of other lands covered by the same notification. Under Section 28A(2), "The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants." Section 28A(3) provides for reference to the court. The provision reads as follows:-

> 28A. Re-determination of the amount of compensation on the basis of the award of the Court –(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section(1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of

> the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court;
>
> Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.
>
> (2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.
>
> (3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.

An application for reference to the court under Section 18 for proper fixation of compensation shall be made within six weeks from the date of the Collector's award, in case the claimant was present or represented before the Collector at the time of making the award; and in other cases, within a period of six weeks of the receipt of the notice from the Collector, under Section 12(2), or within six months from the date of the award, whichever period shall first expire. An application for reference on redetermination under Section 28A is to be filed within three months of the award. The time taken for obtaining copy of the award can be excluded.

3. Under Section 19 of the Act, the Collector is to give a statement to the court, showing the particulars of the extent, the person interested, the amount awarded etc. Section 19(2) provides that "To the said statement shall be attached a schedule giving the particulars of the notices upon, and of the statements in writing made or delivered by, the parties interested respectively."

4. Is it open to the reference court to consider whether there is a valid application before the Collector is the jurisdictional dispute. In **Idicheria Sosa v. State** (AIR 1966 Kerala 278), it was held by a learned Single Judge of this court that the fact that the Collector forwarded a time barred application to the civil court did not take away the jurisdiction of the court to consider whether the reference applications were barred by limitation. But in the Bench decision of this court in **Special Tahsildar (L.A.) v. Kallu** (2000(3) KLT 71), the Division Bench of this court however, took the view that the question as to whether the application was submitted in time or not is a matter to be considered by the Collector and not by the reference court. To quote,

"The reference application to the Collector must be made

> within six weeks from the date of Collector's award. Moreover the reference is to be made by the Collector to the Court. Therefore, the condition precedent for referring the application to the Court is that it must be filed within six weeks from the date of the Collector's award to the Collector. The jurisdiction of the Civil Court to determine higher compensation, as laid down under S.23 of the Act, would arise only when a valid reference has been made under S.18 within the prescribed limitation and the jurisdiction of the Court is founded on a valid reference. Making an application in writing under sub-s.(1) and within the limitation prescribed under sub-s.(2) of S.18 are conditions precedent for the Land Acquisition Officer to make reference under S.18. Only on its receipt, under S.20 Civil Court gets jurisdiction to issue notice and thereafter to conduct enquiry, as contemplated under the Act. If an application for reference is filed beyond the time limit prescribed under S.18 of the Act, the Land Acquisition Officer is not bound to send the same to the Civil Court. The question as to whether the application was submitted in time or not is a matter to be considered by the Collector and not by the reference court."

In yet another decision also reported in **Georgekutty v. State of Kerala** (2001(3) KLT 623) a learned Single Judge of this court, without reference to the bench decision in **Kallu's case** (supra), held that the reference court has no jurisdiction to look into the question as to whether an application is filed within time or not. In a recent decision also in **Krishna Pillai v. State of Kerala** (2007(2) KLT 588), another single Judge has followed the above decision. Thus, after **Kallu's case** (supra), the view taken by this court is that once reference is made by the Collector to the court, the court has jurisdiction only to consider the merits of the case regarding the claim for enhancement and the court has no power

to consider whether there is a valid reference by the Collector, on the basis of an application filed within the prescribed period by the person interested.

5. We are afraid, the above decisions do not reflect the correct position under law, on the subject matter. Once the jurisdiction is conferred on a Tribunal, and if such a jurisdiction is subject to fulfilment of certain conditions, the Tribunal gets jurisdiction only if such pre-conditions are duly satisfied. This principle has been stated in one of the early decisions of the Privy Council, in **Nusserwanjee Pastonjee v. Meer Mynoodeen Khan** [(1855) 6 Moore's Indian Appeals 134] wherein it has been held that

> "wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction; for if they be not complied with the jurisdiction does not arise."

6. In view of the conflicting decisions of various High Courts, after surveying the entire decisions on the point, the Supreme Court in the decision reported in **Mohammed Hasnuddin** v. **State of Maharashtra** (AIR 1979 SC 404) clearly

held that,

> "The fulfillment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector under Sec.18 to make the reference exists. The making of an application for reference within the time prescribed by proviso to S.18(2) is a sine qua non for a valid reference by the Collector.
>
> The court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under S.18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In deciding the question of jurisdiction in a case of reference under S.18 by the Collector to the court, the court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-s.(2) of S.18 of the Act, and if it finds that it was so made, decline to answer reference."

At paragraph 28 of the judgment, it was also held that the Collector has to see whether an application is filed within time. He has no power to refer an application filed beyond time. If in any event such an invalid application happened to be referred, being a jurisdictional issue, the court has a duty to determine the validity of the reference. To quote paragraph 28,

> "If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in S.18. Even if a reference is wrongly

> made by the Collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under S.18, and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in S.18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference."

Still further it has been held that "The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-sec.(2) of S.18 of the Act, and if it finds that it was so made, decline to answer reference."

7. Though without reference to **Hasnuddin's case** (supra), the principle was reiterated in **Ambey Devi v. State of Bihar** [AIR 1996 SC 1513]. At paragraph 3, it was held that "Valid reference is a pre-condition for the Civil Court to adjudicate the objections raised in the reference application. In this case, it is found by the High Court that the appellant had not made any application under Section 18(1). The jurisdiction of the Civil Court to determine higher compensation, as laid down under Section 23 of the Act, would arise only when a valid reference has been

made under Section 18 within the prescribed limitation. The jurisdiction of the Court is founded on a valid reference and then the Civil Court gets jurisdiction to determine the compensation on the basis of the objections raised by the claimant." In **Land Acquisition Officer v. Shivabai** [(1997) 9 SCC 710], the Supreme Court dealt with a collusive attempt of the Collector. It was held that ....."The officer himself was in collusion with the claimants and without making any enquiry he made the reference. .....Under these circumstances, the reference itself is without any jurisdiction and barred by limitation. Thereby, the award of the reference court is clearly illegal....." In **Sharda Devi v. State of Bihar** [AIR 2003 SC 942], the principle that an invalid reference has to be rejected has been restated. "The reference made by the Collector to the Court was wholly without jurisdiction and the Civil Court ought to have refused to entertain the reference and ought to have rejected the same." Thus, there is no room for any doubt, in view of the above direct decisions which is a complete answer to the question, that the reference court under Section 18 is well within its jurisdiction and is bound to exercise such jurisdiction to examine whether there is a valid

reference made in time. Same is also the position as far as reference under Section 28A(3). If from the records forwarded by the Collector to the reference court or otherwise, it is found that the claimant has not submitted a written application within the permitted time for reference, the court has to reject the reference, since there is no valid reference. The court cannot and shall not in such a case answer the reference, since the award passed on an invalid reference is a nullity. It is significant to note that the position and principle under Section 28A(3) has been correctly laid down by two single bench decisions of this court, in **Somasundaran v. Spl.Tahsildar, L.A.** [2002(2) KLT 569] and in **Abraham Kuriakose v. State of Kerala** [AIR 2003 Kerala 263]. In view of the authoritative pronouncement of the Supreme Court on the point, it has to be held that the decisions of this court in **Georgekutty's case** (2001(3) KLT 623) and **Krishna Pillai 's case** (2007(2) KLT 588) are rendered *per incuriam* and hence they are overruled. The bench decision in **Special Tahsildar v.Kallu** (2000(3) KLT 71) rendered *per incuriam,* also does not reflect the correct legal position and hence it does not have any binding force.

8. Coming to the facts of this case, the reference court rejected the reference on the ground that the applications were time barred. The award was passed on 30.3.1995, whereas the application for reference was made only on 25.5.1995. The reference court found that the claimants had participated in the award proceedings. If, as a matter of fact, the claimants or the representatives were present before the Collector at the time of making the award, he has to submit an application for reference within six weeks from the date of the Collector's award. According to the appellants, they were not present before the Collector at the time of making the award. Along with I.A.1215/04, they have produced notice under Section 12(2) of the Act. That notice is dated 16.5.1995. A notice under Section 12(2) is to be issued only when the persons interested/their representatives are not personally present when the award is passed. Section 12(2) reads as follows :-

> "The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

Thus, the notice dated 16.5.1995 issued under Section 12(2) of the Land Acquisition Act would show that they were not present

before the Collector at the time of making the award. If that be so, they need submit the application for reference only within six weeks from the date of receipt of the notice from the Collector under Section 12(2). Notice under Section 12(2) is dated 16.5.1995. Even according to the reference court, the written application for reference was made on 25.5.1995, within ten days of Section 12(2) notice. Therefore, dismissal of the reference as time barred is not justified. Accordingly, we set aside the judgment and decree in LAR No.86/02 on the file of the Principal Sub Court, Alappuzha and remit the matter to the said court with a direction to answer the reference on merits, within a period of four months from the date of receipt of a copy of the judgment.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.228 of 2004

Dated 20th November, 2007.

O R D E R

On 25.10.2007, we disposed of the appeal following the decision of this court in **Krishna Pillai v. State of Kerala** (2007(2) KLT 588). However, it is brought to our notice that the judgment referred to above does not reflect the correct position in law, and that the correct position is laid down in the decision reported in **Mohammed Hasnuddin v. State of Maharashtra** (AIR 1979 S.C.404). Therefore, the judgment dated 25.10.2007 is recalled. A judgment on the correct principles of law is separately pronounced.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.No.228 of 2004

Dated 25th October, 2007.

J U D G M E N T

Kurian Joseph, J.

This is an appeal filed by the claimants in LAR 86/2002 on the file of the Principal Sub Court, Alappuzha. The reference court declined to consider the merits of the case on the only ground of limitation. That issue is covered in favour of the appellants by the Bench decision of this court in **Krishna Pillai v. State of Kerala** (2007(2) KLT 588) wherein it has been held that once the Collector forwards the application for enhancement, the reference court has no jurisdiction to look into the question regarding limitation. Therefore, we set aside the judgment and decree under appeal and remit the matter to the reference court with a direction to dispose of the matter on merits, within a period of four months from the date of first appearance of the parties after remand. The parties shall appear before the reference court on 1.12.2007.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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